

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2003-0777, In the Matter of Muriel D. Vaillancourt and David J. Vaillancourt, the court on December 10, 2004, issued the following order:**

The respondent, David A. Vaillancourt, appeals his divorce decree. He contends that the trial court erred in considering fault conduct as a basis for its order of alimony when the divorce was granted on the grounds of irreconcilable differences. We vacate and remand.

The sole issue before us on appeal is whether the trial court factored fault grounds into its alimony award. “The trial court has broad discretion in determining and ordering the payment of alimony in fashioning a final divorce decree.” In the Matter of Levreault and Levreault, 147 N.H. 656, 657 (2002) (ellipsis and quotations omitted). Absent an unsustainable exercise of that discretion, we will not overturn the trial court’s ruling. *Id.* We have previously held that if a divorce is granted on the grounds of irreconcilable differences, fault cannot be considered when considering a request for alimony. See Chabot v. Chabot, 126 N.H. 793, 795 (1985); RSA 458:19, IV (b) (Supp. 2004).

The order before us contains several findings concerning the respondent’s conduct. Because we are unable to determine whether the trial court erroneously considered such conduct in its determination of the need for alimony, we vacate and remand this case to allow the trial court to conduct a record review within forty-five days of the date of this order. We express no opinion as to whether the trial court’s award was erroneous – we simply direct that on remand the trial court review the record to determine whether it considered the respondent’s conduct when determining the need for alimony. If the trial court should find that it erred, it should reconsider its award and make specific findings and rulings to support any new award. If the court finds that the respondent’s conduct was not a factor considered in its award of alimony, it should issue an order to so advise this court and the parties. We retain jurisdiction of this appeal.

Vacated and remanded.

BRODERICK, C.J., and DALIANIS and GALWAY, JJ., concurred.

**Eileen Fox  
Clerk**

**In Case No. 2003-0777, In the Matter of Muriel D. Vaillancourt and David J. Vaillancourt, the court on December 10, 2004, issued the following order:**

Page Two of Two

Distribution:

Clerk, Family Division at Derry 2002-M-0661

Honorable John M. Lewis

Honorable John A. Korbey

Andrew K. Wilson, Esquire

Barbara J. Griffin, Esquire

Marcia McCormack, Supreme Court

Loretta S. Platt, Supreme Court

Irene Dalbec, Supreme Court

Case Manager

File